

FILED

OCT 27 2009

CLERK, U.S. DISTRICT COURT
NORFOLK, VA

BRYON WINCKLER, #354135,

Petitioner,

v.

2:09CV217

GENE M. JOHNSON, Director of the
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to petitioner's convictions on December 16, 2005, in the Circuit Court for Henrico County, Virginia, for two counts of robbery and two counts of use of a firearm in the commission of a felony. As a result of the conviction(s), petitioner was sentenced to serve fourteen years in the Virginia penal system.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The Magistrate Judge filed his report recommending dismissal of the petition on September 18, 2009. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On October 1, 2009, petitioner's motion for an extension of time within which to file objections to the report was granted to October 20, 2009. However, the Court has received no objections to the report, and the time for filing same has expired.

The Court does hereby accept the findings and recommendations set forth in the report of the United States Magistrate Judge. Therefore, it is ORDERED that the petition be DENIED and DISMISSED on the basis of the statute of limitations and on petitioner's procedural default in the state courts and that judgment be entered in respondent's favor.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty days from the date of entry of such judgment. Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 537 U.S. 322, 336 (U.S. 2003).

The Clerk shall mail a copy of this Final Order to petitioner and to counsel of record for respondent.

JBF

/s/
Jerome B. Friedman
United States District Judge
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

Oct. 27, 2009